

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6354 OF 2005

Satish Bora and Try Builders.

...Petitioner.

Vs.

State of Maharashtra & Ors.

...Respondents.

....

Mr.S. M. Kelkar with Ms.Ruchika Nayyar for the Petitioner.

Mrs. M.P. Thakur, AGP for Respondent Nos.1 to 4, 7 & 8.

Mr. R.S. Apte with Mr. Mandar Limaye for Respondent No.9.

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CORAM : F. I. REBELLO AND

DR.D.Y.CHANDRACHUD, JJ.

February 14, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J):

The Petitioner impugns in these proceedings, the validity of a declaration issued by the Government of Maharashtra under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894, on 21st March 2005 and 6th April 2005. The lands which form the subject matter of the acquisition proceedings comprise of C.T. S.No. 481(part) of Rasta Peth, Pune and admeasure 4055.37 sq.mtrs. The Petitioner which is a partnership firm of Builders and Developers claims to have entered into a development agreement with the Ninth Respondent on 10th January 2005. The revised

Development Plan for the City of Pune was sanctioned by the State Government on 5th January 1987 and the Plan came into force on 5th February 1987. Under the Development Plan as sanctioned, the land was reserved for Government purposes and the acquiring body was Government in the Education Department. The Ninth Respondent served a purchase notice under Section 127 calling upon the Respondents to take steps for the acquisition of the land. On 12th April 2001, the 9th Respondent was informed by the office of the District Employment and Self Employment Guidance Centre that acquisition proceedings had already been initiated since 1997. The Ninth Respondent submitted a building plan for sanction to the City Engineer of the Municipal Corporation. Sanction was refused inter alia on the ground that there was a reservation on the property. It has been averred in the petition that a declaration has been issued under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894.

2. Section 127 of the Act provides thus :

“127. If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date n

which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.”

The submission of the Petitioner is that no steps have been taken within a period of six months of the service of the notice of purchase dated 16th October 2000 upon which the reservation must be regarded as having lapsed.

3. Affidavits in reply have been filed in these proceedings on behalf of the District Employment and Self Employment Guidance Officer, Special Land Acquisition Officer and by the Assistant Director of Town Planning. From the replies and the material that has been placed on the record, it emerges that on 13th November 1998, an application was submitted by the Assistant Director in the Employment Exchange at Pune to the Collector for

initiating acquisition proceedings. The proposal is in the prescribed form and is annexed to the affidavit in reply of the Assistant Director of Town Planning filed on 23rd January 2006 at Exh.B-3. A copy of the covering letter under which the aforesaid statement was submitted was also produced before the Court during the course of the hearing. The Collector thereupon sent the proposal to the Special Land Acquisition Officer at Pune for acquisition proceedings. The Special Land Acquisition Officer asked the City Survey Officer No.2, Pune to carry out a joint measurement of the land under acquisition by a letter dated 5th March 1999. It has also been stated that the Collector directed the Superintendent of Land Records, Pune to complete the joint measurement of the land by July 1999 and the measurement plan was submitted to the Special Land Acquisition Officer on 9th August 1999. Remarks were thereafter sought from the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1971. After the receipt of the purchase notice, the Petitioner was accordingly informed on 12th April 2001 that acquisition proceedings had already been initiated in 1998, that is to say, even prior to the receipt of the notice. The SLAO called upon the Assistant Director, District Employment and Self Employment to

deposit an amount of Rs.1,61,23,573/- as the probable amount to be incurred by way of the cost of acquisition by a letter dated 27th February 2003. A cheque for the aforesaid amount has been deposited with the Special Land Acquisition Officer on 23rd August 2004. The Collector granted his approval to the issuance of a notification under Section 6 of the Land Acquisition Act, 1894, on 24th March 2005 and the notification was accordingly published in the newspapers on 26th March 2005 and in the Gazette on 24th March 2005. Notices have been issued under Section 9(3) and Section 9(4) of the Land Acquisition Act, 1894, on 18th May 2005.

4. Section 127 of the Act inter alia mandates that steps for acquisition have to be initiated within a period of six months of the receipt of the purchase notice. In view of the judgment of the Supreme Court in **Municipal Corporation for Greater Bombay Vs. Dr.Hakimwadi Tenants Association**, 1988 Mh. L.J. 1, it is a settled principle of law that the submission of an application to the State Government for initiating acquisition proceedings would constitute a step as contemplated in Section 127. The Supreme Court held thus:

“According to the plain reading of section 127 of the Act,

it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by section 127 is a mixed question of fact and law. It would therefore be difficult, if not well nigh impossible, to lay down a rule of universal application. ... We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land Acquisition Act making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.” (emphasis supplied).

Section 126(1)(c) contemplates that an application has to be submitted to the State Government for acquisition of the property. Hence, the step that is contemplated in Section 127 is the submission of that application under Section 126(1)(c).

5. On behalf of the Petitioner Counsel sought to submit that the document evidencing the submission of an application for initiating acquisition proceedings had in fact not been submitted and in the alternative that the statements contained in the application were not complete. We do not find any merit whatsoever in the said submission. The Government has produced before us the record, the relevant part whereof has been

placed on affidavit. There is absolutely no basis to draw an inference that the application for acquisition was not submitted to Government. The document that has been produced on record and the covering letter both bear the date of 11th January 1998. The application was complete in all material particulars, as a matter of fact and has been acted upon by the State. Acquisition proceedings were in the circumstances clearly initiated much prior to the issuance of the purchase notice. The Petitioner submitted that he has invested in the property on the strength of the development agreement by entering into settlements with various tenants. That in our view, is no ground for the Court to set aside the acquisition which is otherwise in accordance with law. The office of the Employment Exchange is stated to have been functioning in the property since 1946 and the steps for acquisition that have been initiated by the Government are in accordance with law. Steps having been taken prior to the purchase notice, we do not find any reason to interfere. The Petition is accordingly dismissed. There shall be no order as to costs.

(F. I. Rebello, J.)

